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EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by Verizon New Jersey)	
Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance),)	
NYNEX Long Distance Company)	WC Docket No. 02-67
(d/b/a Verizon Enterprise Solutions),)	
Verizon Global Networks Inc., and)	
Verizon Select Services Inc., for)	
Authorization to Provide In-Region,)	
InterLATA Services in New Jersey)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this evaluation of the application filed by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., on March 26, 2002, to provide in-region, interLATA services in New Jersey.

This application to the Federal Communications Commission (“FCC” or “Commission”) is Verizon’s second for the state of New Jersey. On March 20, 2002, Verizon withdrew its first application for New Jersey, which it had filed with the FCC on December 20, 2001. The

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

Department's Evaluation of that application, filed on January 28, 2002, found that Verizon had succeeded in opening its local markets in New Jersey to competition in most respects.² However, the Department noted that the New Jersey Board of Public Utilities ("BPU") had not issued a final order with respect to UNE rates and that the record did not include a justification for non-recurring charges ("NRCs") for "hot cuts"³ which were significantly higher in New Jersey than in New York or Pennsylvania.⁴ Because several facilities-based CLECs had asserted that the hot-cut NRCs would inhibit their ability to compete in the local telecommunications market, the Department recommended that the Commission approve Verizon's initial New Jersey application subject to the Commission satisfying itself that the hot-cut NRCs were within a range that a reasonable application of TELRIC would produce.⁵ The Department also expressed concerns about the adequacy of Verizon's wholesale billing system in New Jersey and recommended, in the event of the application's approval, that the Commission monitor Verizon's provision of nondiscriminatory access to its wholesale billing functions.⁶

Verizon subsequently withdrew its original New Jersey application in response to concerns about pricing. Its second application for New Jersey includes its agreement to reduce the NRCs for hot cuts.⁷ However, the duration of these reductions remains uncertain. In

² DOJ New Jersey I Evaluation at 2. This Evaluation incorporates the entire DOJ New Jersey I Evaluation by reference.

³ "Hot cuts" involve physically disconnecting the customer's existing in-service loop from the incumbent's switch and reconnecting the loop to the CLEC's switch.

⁴ DOJ New Jersey I Evaluation at 6-8.

⁵ *Id.* at 7-9.

⁶ *Id.* at 5-6 n.21.

⁷ Verizon NJ II Br. at 16; Verizon Garzillo/Prosini Decl. ¶ 4 & Attach. 1.

addition, there are issues concerning nondiscriminatory access to Verizon's OSS in New Jersey that may warrant further scrutiny by the Commission. The Department concludes that Verizon has generally succeeded in opening its local markets in New Jersey to competition and recommends approval of Verizon's application for Section 271 authority, subject, however, to the Commission satisfying itself as to the pricing and OSS issues discussed below.

I. The Department's Evaluation

A. Pricing of Non-Recurring Charges for Hot Cuts

On March 20, Verizon notified the New Jersey BPU that it would effectively reduce the NRCs for hot cuts in New Jersey to \$35, the same price it had agreed to offer as part of a settlement in New York.⁸ CLECs assert not only that the \$35 rate in both states exceeds a proper TELRIC price,⁹ but also that Verizon's commitment to offer the reduced rate in New Jersey is illusory: unlike its commitment to the New York Public Service Commission, Verizon's offer to the New Jersey BPU leaves open the possibility that Verizon may raise prices soon after Section 271 authority is granted. The commitment is binding only until the New Jersey BPU rules on

⁸ Verizon NJ II Br. at 16; Verizon Garzillo/Prosini Decl. ¶ 4 & Attach. 1. Notwithstanding this commitment, Verizon continues to claim that its original hot cut NRCs are within the TELRIC range. *Id.* ¶¶ 17-29.

⁹ See, e.g., AT&T Comments at 7-9; ASCENT Comments at 5-6; Cavalier Comments at 2; XO Comments at 4-5 & nn.10 & 13.

open questions in its pricing docket.¹⁰ To date, Verizon also has refused to foreclose the possibility of challenging the remaining prices set in that docket.¹¹

When rates are the result of state decision-making, they need not be explicitly termed “permanent” to satisfy the requirements of Section 271.¹² However, when the Commission is asked to conduct a Section 271 evaluation based on a BOC’s offer to lower rates below the level that the state has ordered, then the Commission’s review properly encompasses whether the wholesale rates are set at the appropriate level *and* whether the promise of lower rates is sufficiently binding for the Commission to consider these rates to be effective.¹³ In addition to its

¹⁰ Verizon, CLECs and the New York Public Service Commission explicitly agreed that the New York settlement rates will apply for two years, while the reduced New Jersey hot-cut rate will apply for the earlier of two years or until the New Jersey BPU’s ruling on a pending motion for reconsideration of its December pricing order (the one that instituted the objectionable hot-cut NRCs). See XO Comments at 2-4 (comparing Verizon’s commitment not to challenge New York UNE rates during term of plan, through March 1, 2004, with explicit refusal to so commit in New Jersey); cf. AT&T Comments at 11 (noting that Verizon’s promise of lower hot-cut NRCs could be short-lived). Thus, Verizon’s condition implicates not the general rate-making authority of the BPU but a pending decision that could be handed down any day. The New Jersey BPU has not indicated whether or when it may rule on that motion or act to modify the hot cut NRCs.

¹¹ See AT&T Comments at 10 (Verizon has informed the BPU that it “does not intend to waive its right to seek appeal of the NJBPU’s final [pricing] order even though the NJBPU specifically conditioned its support of Verizon’s Application on such a waiver.”); XO Comments at 6 (“Verizon has until April 22, 2002 to appeal the NJ UNE [pricing] Order.”); cf. DOJ NJ I Evaluation at 7 n. 26 (discussing New Jersey BPU’s conditioning its recommendation of approval of Verizon’s application on the requirement that Verizon not appeal the rates).

¹² See *FCC Kansas/Oklahoma Order* ¶ 89 (“The fact that these rates are termed promotional rather than permanent is irrelevant because the rates in fact remain in effect during the term of the O2A.”). However, some degree of certainty is required to support competitive entry. See DOJ Kansas/Oklahoma Evaluation at 25 (The time limitation on the Oklahoma Promotional Rates and “the fact that any one CLEC has no certainty regarding its ability to obtain the discounts (as their availability depends on the number of aggregate competitive lines) makes these promotions a problematic basis on which to predicate long-term competitive entry.”); cf. *FCC Kansas/Oklahoma Order* ¶ 72 (in addition to specified price reductions, SBC removed the “competitive cap” on the Oklahoma Promotional Rates so they would remain in effect for the term of the O2A). The New Jersey BPU has also recognized the import of binding rates. See New Jersey BPU Consultative Report I at 24.

¹³ Cf. *FCC Kansas/Oklahoma Order* ¶¶ 52, 72 (SBC’s offered rate reductions were “approved and adopted” by the Kansas and Oklahoma state commissions before FCC approved Section 271 applications for those states).

assessment of whether Verizon's newly-reduced hot-cut NRCs are TELRIC-compliant,¹⁴ the Commission should also assure itself that Verizon's commitment will remain in place for a sufficient time to allow competitive entry.

B. Nondiscriminatory Access to Verizon's OSS

This Commission has recognized that inaccurate and untimely wholesale bills can impede CLECs' ability to compete.¹⁵ In its Evaluation of Verizon's first New Jersey application, the Department noted that, because Verizon uses the same wholesale billing system in both New Jersey and Pennsylvania,¹⁶ the problems experienced by CLECs in obtaining accurate and auditable bills in Pennsylvania could occur in New Jersey.¹⁷ The Department accordingly recommended continued monitoring of Verizon's wholesale billing system.¹⁸

¹⁴ The New Jersey recurring switch prices also have been challenged as not complying with TELRIC. *See generally* AT&T Baranowski Decl.; WorldCom Fentrup Decl. Although the Department had previously noted that the New Jersey recurring rates appeared to be within the broad range of TELRIC described by this Commission, DOJ NJ I Evaluation at 7 n.27, at least one commenter has argued that the New Jersey switch prices no longer pass the Commission's benchmark test when compared to the recently reduced New York rates. *See* WorldCom Huffman Decl. ¶ 7 & Attach. A. *But see* Verizon Garzillo/Prosini Decl. ¶¶ 32-34 (New Jersey non-loop rates still fall within the benchmark range compared to New York). As it has stated previously, the Department will "rely upon the Commission for its ultimate determination of whether the prices supporting this application are appropriately cost-based." DOJ Missouri I Evaluation at 1-2.

¹⁵ *FCC Pennsylvania Order* ¶ 23.

¹⁶ DOJ New Jersey I Evaluation at 5-6 n.21; Verizon NJ I McLean/Wierzbicki/Webster Decl. ¶¶ 108, 113-15.

¹⁷ DOJ New Jersey I Evaluation at 5-6 n.21; *see also* DOJ Pennsylvania Evaluation at 11-14; New Jersey BPU Consultative Report I at 40-41 (finding Verizon's wholesale billing to be nondiscriminatory, but conditioning approval on Verizon's commitment to continue manual adjustment until it can produce accurate electronic bills).

¹⁸ DOJ New Jersey I Evaluation at 6 n.21; *cf. FCC Pennsylvania Order* ¶ 26 (bill amounts in dispute in Pennsylvania declined from over 26 percent of total charges in February 2001 to over 2 percent of total charges in June 2001), ¶ 42 ("If Verizon's performance deteriorates, we will not hesitate to invoke our enforcement authority to ensure that Verizon continues to provide non-discriminatory access to its wholesale billing functions."). The Department also recognized that few New Jersey CLECs had asserted that wholesale billing problems had led to actual competitive harm and explained that the lack of competitive entry in New Jersey made it hard to assess the adequacy of Verizon's wholesale billing. DOJ New Jersey I Evaluation at 6 n.21.

CLEC comments and *ex partes* filed since the Department's Evaluation of Verizon's first New Jersey application reinforce those concerns.¹⁹ Although Verizon claims to have implemented the software changes necessary to create an auditable electronic bill in the industry standard Billing Output Specification Bill Data Tape ("BOS-BDT") format,²⁰ AT&T and ATX assert that they cannot currently audit their bills electronically.²¹ Moreover, they claim that manual audits of their paper bills have revealed inaccuracies.²² In particular, it appears that the bills for customers served via the UNE-platform periodically include retail charges for vertical features.²³ AT&T therefore asserts that it must either pay these undisputedly erroneous charges for vertical features or manually audit all of the relevant bills to avoid paying those charges.²⁴ Both alternatives raise costs.²⁵

¹⁹ See, e.g., AT&T Comments at 19-23; ATX NJ I Billing *Ex Parte* at 1-4; Metro Teleconnect Comments at 4-5; National ALEC Association Comments at 4-5.

²⁰ See Verizon NJ I Br. at 67.

²¹ AT&T Comments at 19-21; AT&T Kamal Decl. ¶¶ 11-23; ATX NJ I Billing *Ex Parte* at 2.

²² AT&T Comments at 21-23; AT&T Kamal Decl. ¶¶ 24-29; ATX NJ I Billing *Ex Parte* at 2-3. The Department recognizes that KPMG audited Verizon's paper bills for the latter half of 2000 and found them to be accurate. *KPMG Final Report* at 347-52. Nonetheless, the Department has continued to consider commercial experience both concurrent with and subsequent to testing to provide the most probative evidence. See DOJ Pennsylvania Evaluation at 7-8 (citing CLEC complaints regarding Verizon's Pennsylvania bills despite KPMG's positive assessment of the bills' accuracy); see also *FCC Pennsylvania Order* App. C ¶ 31 (commercial experience provides most probative evidence); *FCC New York Order* ¶ 89 (same).

²³ AT&T Comments at 21-22; AT&T Kamal Decl. ¶¶ 25-26; ATX NJ I Billing *Ex Parte* at 2-3.

²⁴ AT&T Comments at 23; AT&T Kamal Decl. ¶¶ 29-31 (stating, in part, that Verizon has agreed that the disputed amounts are erroneous); cf. ATX NJ I Billing *Ex Parte* at 4.

²⁵ AT&T Comments at 23; AT&T Kamal Decl. ¶¶ 30-31; ATX NJ I Billing *Ex Parte* at 3-4.

Although there is little evidence in the record to quantify the competitive harm caused by the deficiencies in Verizon's billing system,²⁶ continuing questions about the system cause the Department to recommend again that the Commission monitor Verizon's wholesale billing system (as the Commission committed to do in its *Pennsylvania Order*).²⁷ Verizon's own performance data demonstrates that inaccuracies in the carrier bill persist.²⁸ The evidence, however, suggests that these inaccuracies do not represent a substantial portion of the carrier bill.²⁹ Persuasive evidence that Verizon had significantly raised CLECs' costs by failing to fulfill a competitive checklist obligation would be a basis for recommending denial of its application.³⁰ Although the evidence on the record of this proceeding does not appear to rise to that level, it certainly warrants continued scrutiny by the Commission.³¹

²⁶ Cf. AT&T Comments at 23; AT&T Kamal Decl. ¶¶ 26-31 (there were inappropriate retail charges on 2.03 percent of a sample of February 2002 wholesale bills; AT&T has had to file "between 12 and 15 separate claims" for these errors); ATX NJ I Billing *Ex Parte* at 4. The Department encourages CLECs to quantify not only the existence of problems but also their competitive.

²⁷ DOJ New Jersey I Evaluation at 6 n.21 (citing *FCC Pennsylvania Order* ¶ 42 (stating Commission's intent to monitor Verizon's post-approval compliance with obligation to provide nondiscriminatory access to wholesale billing functions)).

²⁸ The percentage of bill amounts in dispute in New Jersey, which had been less than 2 percent between October and December 2001, rose to over 10 percent in January 2002 before dropping to less than 1 percent in February. See Verizon C2C Performance Report at 20 (PM BI-3-03-2030 (% Billing Adjustments) (April 2001 through February 2002)).

²⁹ Verizon NJ I McLean/Wierzbicki/Webster Decl. at Attach. 18. The Department acknowledges that overcharges are only one way a CLECs' costs may be raised by an inaccurate bill. Auditing inaccurate bills can also increase costs. The record, however, does not include quantification of the increase in cost incurred by CLECs that are unable to audit their bills electronically.

³⁰ See, e.g., DOJ Oklahoma I Evaluation at 21-24. With regard to billing, the Department and the Commission have agreed that "inaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways." *FCC Pennsylvania Order* ¶ 23.

³¹ In addition to Verizon's apparent recent deterioration in billing performance, at least one CLEC asserts that Verizon has changed its practice of not requiring CLECs to pay disputed bill amounts pending resolution of the dispute. ATX NJ I Billing *Ex Parte* at 3. In approving Verizon's *Pennsylvania* application despite observed wholesale billing problems, the Commission suggested that Verizon's practice of not requiring CLECs to pay disputed amounts pending settlement provides additional "assurance that any remaining issues with Verizon's BOS-BDT bills [in Pennsylvania] will be handled in a manner that reduces the burden on competitive LECs to initiate and

Another aspect of Verizon's OSS may provide cause for concern. According to Verizon, it has recently changed the sequencing of internal service orders sorted by its Service Order Processor ("SOP") in New Jersey.³² Verizon realized that its longstanding sort sequence was adding 24 hours or more to the processing of certain CLEC orders through its billing systems, which correspondingly delayed the generation of a billing completion notifier.³³ On March 18, Verizon reversed the sorting of these internal service orders so they now will be presented in the sequence necessary to more promptly process the orders.³⁴ It is unclear whether this change was prompted by or is responsive to the concerns raised by MetTel in this proceeding.³⁵ It is not possible to analyze MetTel's allegations in depth by the Evaluation deadline.³⁶ The aggregate

resolve disputes. . . . We fully expect Verizon to closely adhere to its official policies so that its dispute-resolution procedures are clearly articulated and consistently applied to all parties." *FCC Pennsylvania Order* ¶ 40. The Commission's monitoring should ensure that Verizon acts to minimize the burdens on CLECs of erroneous billing and unauditable bills.

³² Verizon Completion Notifiers *Ex Parte* at 2.

³³ *Id.*

³⁴ *Id.* This change applies to the sorting of both retail and wholesale service orders.

³⁵ MetTel has asserted that Verizon's generation of provisioning and billing completion notifiers is untimely and inaccurate. MetTel Comments at 5-6; MetTel Goldberg Decl. ¶¶ 6-8; *see also* Verizon McLean/Wierzbicki/Webster/Canny Decl. ¶ 21 (special study of billing completion notifier timeliness for MetTel revealed that 95 percent of MetTel's notifiers were returned within four to five days, one day later than the 95 percent within three to four days shown in the aggregate CLEC data). *But see generally* Verizon Response to MetTel *Ex Parte* (confidential *Ex Parte*).

³⁶ MetTel has several other complaints besides those relating to the receipt of completion notifiers. The most significant claim is that Verizon is not providing MetTel with its CLEC-specific data in New Jersey. MetTel Comments at 4, 7; MetTel Goldberg Decl. ¶ 4. CLECs must have access to their individual data both to understand the wholesale performance they are receiving from the BOC and to be able to reconcile any discrepancies between their understanding of the performance they have received and that reported by the BOC. *See* DOJ Massachusetts I Evaluation at 15-16 (discussing Verizon's failure to provide individual CLEC-specific performance reports). The Department and the Commission have encouraged data reconciliation as this results in the most reliable source of data for those evaluating the application. *See FCC New York Order* ¶¶ 294-95, 302 (finding reconciled hot-cut data to be the most reliable evidence of performance); DOJ Texas I Evaluation at 5-7 (to be reliable, performance metrics must be meaningful, accurate, and reproducible), 33 (relying on reconciled hot-cut data); *see also* DOJ Georgia/Louisiana I Evaluation at 31 (reliable performance data key to evaluating commercial experience and helping ensure that BOC continues to provide adequate service).

performance reported by Verizon, however, is within the benchmarks set by the New Jersey BPU.³⁷ Nonetheless, timely and accurate return of billing completion notifiers is competitively significant³⁸ and the Commission should satisfy itself that Verizon is complying with this requirement and that reliance on aggregate data does not obscure problems that may be significant for some classes of customers.

II. Conclusion

The Department has not changed its generally positive assessment of the openness of the local telecommunications markets in New Jersey.³⁹ Nonetheless, several questions remain for the Commission to resolve. Although Verizon's reduction of hot cut NRCs appears to respond to the concern expressed in the Department's Evaluation of its first New Jersey application, it is unclear whether this reduction will remain in effect for a sufficient period of time. Moreover, issues have been raised regarding nondiscriminatory access to Verizon's OSS in New Jersey.⁴⁰ The Department therefore recommends that the Commission approve Verizon's second

³⁷ Verizon McLean/Wierzbicki/Webster/Canny Decl. ¶¶ 12, 17. *But see id.* ¶ 19 (billing completion notices have been returned within the four-day period deemed adequate by the Commission for purposes of Verizon's Pennsylvania application rather than within the three-day benchmark established by the New Jersey BPU).

³⁸ *See FCC Pennsylvania Order* ¶ 43 ("Premature, delayed or missing [billing completion notifiers] can cause competitors to double-bill, fail to bill or lose their customers.").

³⁹ DOJ New Jersey I Evaluation at 3-6.

⁴⁰ Expecting that there would be few new issues contested in this refiled application, the Commission established an extremely abbreviated briefing schedule. FCC New Jersey II Public Notice at 1. This has compelled the Department to note, but not resolve, the OSS issues discussed above.

application for Section 271 authority in New Jersey subject to the Commission's satisfying itself as to the pricing and OSS issues discussed above.

Respectfully submitted,

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Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on April 15, 2002.

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